



## **500.62 Zero Tolerance Law Enforcement**

Number Series: 500—Operational  
Approved Date: July 30, 2018  
Review Due Date: July 30, 2021

Sheriff's Approval: Digital  
Review Frequency: 3- Years

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### **POLICY**

The Hendry County Sheriff's Office will enforce Florida Statutes 322.2616 where probable cause exists that a driver under 21 years of age has a breath alcohol level of 0.02 or higher

### **PROCEDURE**

- A. Enforcing Florida Statutes 322.2616 in the field.
  - 1. Lawful contact — A lawful contact must be made before a driver under 21 years of age can be checked for a violation of Florida Statutes 322.2616.
    - a. Lawful contacts include:
      - 1. A traffic stop related to a violation of Florida law.
      - 2. Contact at a sobriety checkpoint.
      - 3. Contact at the site of a traffic crash.
      - 4. A consensual encounter with a driver under 21 years of age.
- B. Rule out a violation of Florida Statutes 316.193.
  - 1. Before checking the driver less than 21 years of age for a violation of Florida Statutes 316.2616 the possibility that the driver is legally impaired under Florida Statutes 316.193 must be ruled out.
    - a. Interview the driver, verify the driver's age, and check for signs of impairment.
    - b. Interview the driver to verify that impairment is not caused by a pre-existing medical problem.
    - c. Have the driver perform standardized field sobriety tests if reasonable suspicion exists.
    - d. If there is not probable cause to arrest the driver for DUI follow the procedures for Florida Statutes 322.2616.
- C. Check for violation of Florida Statutes 322.2616.
  - 1. If probable cause does not exist to arrest the driver under 21 years of age for DUI, but there are indications that the driver has consumed an alcoholic beverage, the deputy will determine if the driver is in violation of Florida Statutes 322.2616.
    - a. After being with the driver for at least 20 minutes, if the deputy is a trained breath test operator (BTO), the deputy will request the driver to submit to a breath test consisting of two samples on the Breath Test Instrument (BTI). If the driver refuses to submit to a test of his/her breath,

implied consent must be read. (Note: Implied consent should not be read unless the driver refuses to submit to a breath test)

- b. If the deputy is not a trained BTO, the deputy will request the assistance of a trained BTO. The trained operator will conduct the test after at least 20 minutes has elapsed since the initial deputy made contact with the driver.
- c. If the two breath samples yield breath alcohol levels of 0.02 or higher, the officer will take the driver's license and issue a suspension using forms provided by the Department of Highway Safety and Motor Vehicles.
- d. If the driver refuses to give a breath sample, the deputy will take the driver's license and issue a suspension using forms provided by the Department of Highway Safety and Motor Vehicles.
- e. If the driver gives one sample and then refuses to give a second sample, the deputy will inform the driver of implied consent. If the driver still refuses to provide the standard two breath samples it is considered a refusal.
- f. After the issuance of the suspension notice, if there is no arrest for another violation and the driver is age 18-20, the driver will be released and told that they are ineligible to drive for 12 hours upon issuance of the temporary 10 day permit to drive.
- g. If there is no arrest and the person is under 18, the deputy will follow the established juvenile operation procedures.
- h. Since probable cause for the DUI arrest has already been eliminated, if the breath samples yield a breath alcohol level in excess of 0.08, an arrest will not be made under Florida Statutes 316.193. A suspension under Florida Statutes 322.2616 should be issued. (Note: You can always deescalate a DUI investigation to an .02 violation, but never escalate an .02 violation, after the use of a BTI, into a DUI arrest)

D. Documenting suspension under Florida Statutes 322.2616.

1. Fill out and issue Notice of Suspension packet provided by the Department of Highway Safety and Motor Vehicles.
2. Complete the statement affidavit.
3. Complete affidavit of refusal to submit to breath test if applicable.
4. Complete BTI breath test result affidavit if applicable.
5. Send all required forms to the Department of Highway Safety and Motor Vehicles as required by Florida Statutes 322.2616.
6. Enter data into the BTO field test log (Personal BTO log retained by BTO operator).

E. Operation of BTO

1. Only deputies who are trained BTO operators will administer breath tests with the agency's BTI's.
2. Training will consist of in-service training conducted by trained BTO instructors.
3. BTO operators will follow the manufacturers' procedure for conducting all breath tests.
4. A copy of the manufacturer's procedure will be located with the BTO field test log.
5. BTO will maintain a personal log of all breath tests conducted on a BTI. This log will include the instrument used (including serial number), person providing the breath samples, date/time of test and test results.

F. Routine care and Service of BTI

1. Only trained Agency Inspector (AI) service technicians will perform service on the agency's BTI's.
2. All AI's will be inspected and checked for accuracy according to the manufacturer's recommendations.

G. Procedure for use of blood test results for Florida Statutes 322.2616.

1. In the event that blood test results are used to suspend the driving privilege under Florida Statutes 322.2616, the officer will follow the agency's procedures established for implementing Florida Statutes 322.2615.
  - a. The driver does not have the option to take a blood test. The driver must submit to a breath test requested by the deputy. The driver can seek a blood test at his/her own expense after release.
  - b. If the driver is transported to the hospital for medical reasons and a breath test is not practical a blood test can be requested.

H. Procedure for use of an Intoxilyzer instrument when enforcing Florida Statutes 322.2616 when a BTO is unavailable in the field.

1. The deputy will acquire consent from the driver to be transported to the nearest Intoxilyzer location.
2. If driver refuses to comply with the requests of the deputy to be transported to an Intoxilyzer location, the deputy must release the driver without further incident.
3. If the driver is under 18 years of age, the deputy will follow the established juvenile procedures.
  - a. Note: A violation of Florida Statutes 322.2616 is neither a traffic infraction nor a criminal offense, nor does being detained pursuant to this statute constitute an arrest. A violation of this statute is subject to the administrative suspension of the driver's license, which is administered by the Department of Highway Safety and Motor Vehicles.

## DEFINITIONS

**0.02 OR ZERO TOLERANCE LAW** – Refers to Florida Statutes 322.2616 – a statute making it unlawful for persons under 21 years of age to drive with a breath alcohol level of 0.02 or higher.

## REFERENCES

State/Federal Regulations:

Florida Statutes 316.193  
Florida Statutes 322.2615  
Florida Statutes 322.2616

CFA:

CFA Standard 18.01 and 18.03M

Forms:

None

Other Policy/ Procedure References:

500.06 Juvenile Operations

500.35 DUI Traffic Enforcement